IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9479 of 1999

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODBHAI HIRABHAI PARMAR

Versus

COMMANDANT

Appearance:

1. Special Civil Application No. 9479 of 1999

MR AS SUPEHIA for Petitioner No. 1

MR JS YADAV for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/08/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.A.S.Supehia on behalf of the petitioner and learned advocate Mr.J.S.Yadav for respondent.

Rule has been issued in this petition by this Court on 15th December, 1999 and affidavit-in-reply has been filed by the respondent along with the policy of the compassionate appointment and rejoinder also filed by the petitioner.

#. The brief facts giving rise to the present petition are as under :

The father of the petitioner was working as Chowkidar in the respondent school and he expired on 23rd August, 1990. Therefore, the mother of the petitioner had applied for appointment on compassionate ground but said request came to be refused on the medical ground. However, the case of the petitioner for compassionate appointment also came to be refused on the ground of economic condition and other factors and therefore, this petition.

#. Learned advocate Mr.Supehia for the petitioner submits that the order of rejection has been passed by the respondent which is at Page.11 - Annexure-F wherein only economic condition and liabilities of the family has been taken into account and on that basis, request made by the petitioner has been rejected and as such, no other details and reason has been given by the respondent. It may also be noted that the respondent has stated in the impugned order that various factors as relevant for rejecting the application submitted by the petitioner. Therefore, according to him, unreasoned and non speaking order has been passed by the respondent. Learned advocate Mr.Supehia submitted that in affidavit-in-reply filed by the respondent in para-10, details about the benefits received by the widow has been mentioned which covered family pension amount, DCRG, CGEIS and provident fund amount and no other details as to family assets and liability has been considered by the respondent. He also submitted that according to the policy which is annexed to the reply filed by the respondent which is at page.28 [see internal page.9] Item No.9, in the scheme itself, it is provided that while considering such application for compassionate appointment, objective view should be taken by the employer but it is case of the petitioner that no such objective view has been taken by the respondents and therefore, the decision taken by the respondent while rejecting the application requires to be quashed and set aside with directions on the respondents to reconsider the case of the petitioner for compassionate appointment. Learned advocate Mr.Yadav has submitted that detailed reply has been filed by the

respondent wherein, economic condition of the family and income of the members of the family and assets and liabilities have been considered by the respondent while rejecting the application of the petitioner. He also submitted that the quota which was available for compassionate appointment prior to 1995 to the tune of 14.5 % but now it is reduced to 5 % after the year 1995 and therefore, the petitioner is not covered under the quota of 5 % and therefore, his application has been rightly rejected by the respondents. He also submitted that compassionate appointment is not a matter of legal right but it is a matter of policy depends upon rules or provisions of the policy and accordingly, the dependent may entitle to the compassionate appointment. It is not obligation upon the respondent to give compassionate appointment to any dependent of such deceased employee and therefore, when there is no legal right in favour of the petitioner, then this Court cannot direct the respondents to give compassionate appointment.

#. I have considered submissions made by the learned advocates for the parties and also perused the policy which is annexed to the reply given by the respondents. At this stage, it is pertinent to refer the policy of the respondents and therefore relevant guideline prescribed in Col.[C] [See.pg.28 internal page.9] is reproduced hereinbelow.

"[C] The Scheme of compassionate appointments was conceived, as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness / retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities [including the benefits received under the various welfare schemes mentioned above] and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc."

#. In light of above para of the scheme which requires to consider such application of the compassionate appointment by the respondent independently and objectively. Merely income of the family pension and provident fund is not enough to reject the application for compassionate appointment. But all the relevant factors requires to be taken into account by the respondent while considering the application for compassionate appointment. However, considering the reply submitted by the respondent, amount of family pension and other amount is being received by the widow of the deceased employee including provident fund amount but what are the other assets and labilities of the family which is said to have been taken into consideration, have not been clarified by the respondents and while adopting such technical approach, the application of the petitioner seems to have rejected by the respondent and the same does not seem to have considered in the true spirit of the policy framed for the purpose. It also transpires that the respondent has taken a technical approach even at the initial stage and rejected the application of the wife of the deceased employee for compassionate appointment on medical ground. However, thereafter she suggested the name of the other dependent in the year 1992 but said request for other dependent has also been rejected by the respondent vide order dated 18th October, 1994 in respect of the application dated 24th April, 1992. The technical approach of the respondent does not end here but thereafter also, the stand of the respondent that after 1995, the quota for compassionate appointment has been reduced by the Central Government to 5 % from 14.5 % and in that slab of 5 % the petitioner's case cannot be considered and therefore, the respondents are not able to consider the case of the petitioner. In my opinion, this is clear technical approach and stand taken by the respondents because the concerned employee who expired on 23rd August, 1990 and application was submitted on 24th April, 1992 and it was rejected on 18th October, 1994 and therefore, whatever quota for compassionate appointment prevailing and applicable in the years prior to 1995 should have been made applicable in case of the petitioner and therefore, according to my opinion, the case of the petitioner for compassionate appointment is required to be reconsidered by the respondents inasmuch as the earlier application was prior in time before 1995. However, so far as the contention raised by the learned advocate Mr.Yadav that there is delay in making the application, it is observed that this contention cannot be accepted as there was no delay on the part of the petitioner for making the application for compassionate

appointment. Therefore, the respondent has taken technical stand and not objectively considered the case of the petitioner as per the spirit of the contents of para [C] of the scheme / guidelines and as such, there seems no independent decision taken by the respondent while keeping in mind the objective view in the matter and therefore, according to my opinion, the decision of the respondent which is at Annexure-F is required to be quashed and set aside.

#. In the result, the order passed by the respondent dated 27th September, 1999 is hereby quashed and set aside with directions to the respondent to reconsider the case of the petitioner in light of the policy for compassionate appointment as mentioned in para-28 internal page.9 of the policy and to consider the case of the petitioner in the slab and / or quota existing prior to 1995 and examine the matter independently with objective view and to consider the total income of the family of the petitioner while excluding the pension and other benefits which was received by the family of the petitioner after death of the concerned employee and take appropriate decision within three months from the date of receiving the copy of this order.

#. In view of above observations and directions, present petition succeeds and the same is allowed accordingly.

Rule is made absolute to the extent indicated above.

Direct Service permitted.

Date : 19/8/2003 [H.K.Rathod, J.]
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